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OFFICE OF PETITIONS

In re Application of :
Wei-Chiang Shen et al. :
Application No. 09/845,153 : DECISION ON PETITION
Filed: May 1, 2001 :
Attorney Docket No.: :
1696.0020008/RWE/BEC :
Title: METHODS AND COMPOSITIONS :
FOR LIPIDIZATION OF HYDROPHILIC :
MOLECULES :

This is a decision on the petition filed March 29, 2002, requesting that application number 09/845,153 be accorded a filing date of May 1, 2001.

The Office regrets the delay in issuing this decision.

The application was deposited on May 1, 2001 without drawings. On June 26, 2001, the Office of Initial Patent Examination, (OIPE) sent a notice. On February 1, 2002, OIPE sent a second notice (Notice), withdrawing the previous notice, stating that it had been sent in error, and further setting forth that the application had been deposited without drawings. The Notice indicated that a filing date had not been accorded, and that a filing date would be accorded upon the depositing of drawings.

In response, on March 29, 2002, applicants filed the present petition. Petitioner has not submitted the missing drawings, and has asserted that they are not required.

MPEP 608.02 states, in part:

An OIPE formality examiner should not treat an application without drawings as incomplete if drawings are not required. A drawing is not required for a filing date under 35 U.S.C. 111 and 113 if the application contains:

- (A) at least one process claim including the term "process" or "method" in its introductory phrase;
- (B) at least one composition claim including the term "composition," "compound," "mixture" or "pharmaceutical" in its introductory phrase;
- (C) at least one claim directed to a coated article or product or to an article or product made from a particular material or composition (i.e., an article of known and conventional character (e.g., a table), coated with or made of a particular composition (e.g., a specified polymer such as polyvinyl-chloride));
- (D) at least one claim directed to a laminated article or product (i.e., a laminated article of known and conventional character (e.g., a table)); or
- (E) at least one claim directed to an article, apparatus, or system where the sole distinguishing feature is the presence of a particular material (e.g., a hydraulic system using a particular hydraulic fluid, or a conventional packaged suture using a particular material).

For a more complete explanation about when a drawing is required, see MPEP 601.01(f). For applications submitted without all of the drawings described in the specification, see MPEP § 601.01(g). If an examiner determines that a filing date should not have been granted in an application because it does not contain drawings, the matter should be brought to the attention of the supervisory patent examiner (SPE) for review. If the SPE decides that drawings are required to understand the subject matter of the invention, the SPE should return the application to OIPE with a typed, signed, and dated memorandum requesting cancellation of the filing date and identifying the subject matter required to be illustrated.


Pursuant to this section of the MPEP, it has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under the first sentence of 35 U.S.C. §113. A review of the record reveals that each claim is directed to either a composition or a method. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as originally filed, is entitled to a filing date of May 1, 2001.

Accordingly, the petition is **GRANTED**.

The Notice, mailed on February 1, 2002, was sent in error, and is hereby **VACATED**. As such, no petition fee is necessary, and the petition fee has been refunded to petitioner's Deposit Account, as authorized in the petition.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 1, 2001, using the application papers filed on that date.

Any inquiries related to this decision should be directed to Attorney Paul Shanoski at (703) 305-0011.



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